

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

EXXON MOBIL CORPORATION

and

CARGILL DRY CORN

INGREDIENTS, INC.,

Defendants.

Civil Action No. _____

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

NATURE OF THE ACTION

This is a civil action for injunctive relief and recovery of costs under Sections 106(a) and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606(a) and 9607. The United States seeks injunctive relief to remedy conditions in connection with the release or threatened release

of hazardous substances into the environment at the Gurley Pesticides Burial Superfund Site (the "Site") in Selma, Johnston County, North Carolina. The United States also seeks unreimbursed incurred costs as well as a declaratory judgment of liability for costs to be incurred for response activities at the Site.

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, and the Defendants, pursuant to Sections 106(a), 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a) and 9613(b), and under 28 U.S.C. §§ 1331 and 1345.

2. Venue is proper in this District under Sections 106(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a) and 9613(b), and 28 U.S.C. § 1391(b) and (c), because the claims arose, and the threatened and actual releases of hazardous substances occurred, within this judicial district.

DEFENDANTS

3. Defendant Exxon Mobil Corporation ("Exxon Mobil") is a corporation organized and incorporated under the laws of the State of New Jersey that does business in the State of North Carolina.

4. Defendant Cargill Dry Corn Ingredients, Inc. ("Cargill") is a corporation organized and incorporated under the laws of the State of Delaware that does business in the State of North Carolina.

5. Each Defendant is a "person" within the meaning of Section 101(21) of

CERCLA, 42 U.S.C. § 9601(21).

GENERAL ALLEGATIONS

6. The Gurley Pesticide Burial Site, located in Selma, Johnston County, North Carolina, is comprised of approximately 103 acres, and is the location of a chemical fertilizer production facility and pesticide burial area.

7. Mobil Corporation was a former owner and operator of the Site at the time of disposal of hazardous substances within the meaning of CERCLA Section 107(a)(2), 42 U.S.C. § 9607(a)(2). Exxon Corporation merged with Mobil Corporation in 1999. Defendant Exxon Mobil Corporation is the successor to Mobil Corporation and liable within the meaning of CERCLA Section 107(a)(2), 42 U.S.C. § 9607(a)(2).

8. Gurley Milling Company was a former owner and operator of the Site at the time of disposal of hazardous substances within the meaning of CERCLA Section 107(a)(2), 42 U.S.C. § 9607(a)(2). Gurley Milling Company was purchased by Illinois Cereal Mills, which was acquired by Cargill Dry Corn Ingredients, Inc. Defendant Cargill Dry Corn Ingredients, Inc. is successor to these companies and liable within the meaning of CERCLA Section 107(a)(2), 42 U.S.C. § 9607(a)(2).

9. Contaminants found in the soils, groundwater, surface water, or sediments at the Site, including lead, arsenic, DDT and its metabolites, benzene, lindane, 1,2 - dichloropropane, alpha-chlordane, fluoride, heptachlor epoxide tetrachloroethene, trichloroethylene, mercury, nickel, chromium, copper, and zinc are hazardous substances

within the meaning of CERCLA Section 101(14), 42 U.S.C. § 9601(14).

10. EPA issued a Record of Decision ("ROD") on September 28, 2006, setting forth the remedial design and remedial action to be performed at the Site.

11. The Site is a "facility" within the meaning of CERCLA Section 101(9), 42 U.S.C. § 9601(9).

12. Actual and threatened "releases" of hazardous substances into the environment, within the meaning of CERCLA Section 101(22), 42 U.S.C. §9601(22), have occurred and will continue to occur at and from the Site.

FIRST CLAIM FOR RELIEF

13. Paragraphs 1-12 are realleged and incorporated herein by reference.

14. CERCLA Section 106(a), 42 U.S.C. § 9606(a), provides in pertinent part:

In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

15. Executive Order 12580, issued January 23, 1987, provides that the President's functions under CERCLA Section 106(a), 42 U.S.C. § 9606(a), are delegated, in part, to the Administrator of the Environmental Protection Agency ("EPA").

16. EPA has determined that there is or may be an imminent and substantial

endangerment to the public health or welfare or the environment because of actual or threatened releases of hazardous substances from the Site.

17. Defendants are liable for the injunctive relief to which the United States is entitled at the Site under CERCLA Section 106(a), 42 U.S.C. § 9606(a).

SECOND CLAIM FOR RELIEF

18. Paragraphs 1-17 are realleged and incorporated herein by reference.

19. CERCLA Section 107(a), 42 U.S.C. § 9607(a), provides in pertinent part:

- (1) the owner and operator of a vessel or a facility, [and]
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, . . . shall be liable for –
 - (A) all costs of removal or remedial action incurred by the United States Government ... not inconsistent with the national contingency plan. . . .

20. The United States has incurred and will continue to incur costs of removal and remedial actions not inconsistent with the National Contingency Plan in response to the release or threatened release of hazardous substances at and from the Site, within the meaning of CERCLA Sections 101(23), (24), (25), 42 U.S.C. §§ 9601(23), (24), (25).


21. Defendants are liable to the United States, as successors to the current owners and/or operators of the Site, or as the owners and/or operators of the Site at the time of disposal of hazardous substances, for all response costs, including the costs of removal and remedial actions, incurred and to be incurred by the United States with respect to the

Site, plus interest, pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

1. Order Defendants to abate the threat posed by the release or threatened release of hazardous substances by performing the remedy selected by EPA in the ROD;
2. Award the United States a judgment against Defendants for all costs incurred by the United States in connection with the Site, plus interest; and
3. Award the United States a declaratory judgment, pursuant to CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), that Defendants are liable for all future costs incurred by the United States in connection with the Site.

Respectfully submitted, 

ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

ELIZABETH F. KROOP
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
Phone: 202-514-5244
Fax: 202-514-2583
Email: Elizabeth.Kroop@usdoj.gov
D.C. Bar #: 943795

GEORGE E.B. HOLDING
United States Attorney
R.A. RENFER, JR.
Assistant US Attorney, Civil Division
United States Attorney's Office
310 New Bern Ave.
Suite 800, Federal Building
Raleigh, North Carolina 27601
Tel: 919-856-4530

Dated: 10/15/07